IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.7776 of 2005

Avinash Mulchand Gothi
and another ..Petitioners

vs.

1. Smt.Venubai Laxman
Sahane and others ..Respondents

Shri N.J.Patil for petitioners.

CORAM: S.B.MHASE J.
7th March, 2006

P.C.

1. Heard.

2. Reg.Civil Suit No. 58 of 1999 is pending on the file of Civil Judge, Jr.Dn., Igatpuri. The said suit is filed by respondent nos. 1 to 7. Respondent nos. 1 to 7 are the plaintiffs in the said suit. Respondent no.8 is defendant no.1 in the said suit and petitioner nos. 1 and 2 are shown to be defendant nos. 2 and 3. By order dated 20th July, 2001 the said suit was dismissed as against petitioners/defendant nos. 2 and 3 since respondent nos. 1 to 7/original plaintiffs have failed to take steps to serve the petitioners/defendant nos. 2 and 3 under Order IX Rule 5 of the Code of Civil

Procedure. The suit proceeded as against respondent no. 8. However, respondent no.8 also failed to file the written statement and thus, no written statement order was passed as against respondent no.8. It appears that thereafter on 18th December,2002, application was submitted by respondent nos. 1 to 7 at Exh.19 making a request that the order passed as against the petitioners/original defendant nos. 2 and 3 dismissing the suit shall be set aside and summons be issued to them. On this application, respondent no.8 has given a say to the effect that he has no objection to set aside the said order of dismissal and summons be issued to defendant nos. 2 and 3. Therefore, the Court passed the order in single word "allowed". It appears that on the said date i.e. 18th December, 2002, respondent nos. 1 to 7 have also submitted the application Exh.20 for condonation of delay in making the application to set aside the order passed by the Court dismissing the suit as against the petitioner/original defendant nos. 2 and 3. On that application, respondent no.8 has stated that he has no objection for setting aside the order of dismissal of the suit and for condoning delay.

However, it appears that no order is passed by the Civil Judge, Jr.Dn., Igatpuri on the said Exh.20. After service of the summons of the said suit, the petitioners have filed their reply to the applications at Exh.19 and 20 and the said reply is at Exh.31 wherein it is stated that those orders have been passed without hearing them and there are no justifiable reasons for condonation of delay etc. Then there is an application Exh.32 given by the present petitioners making similar request as made in Exh.31 and requesting the Court that the order passed on Exh.19 be set aside and unless the application Exh.20 condoning the delay is allowed Exh.19 shall not be allowed. The Court passed the following order:

> "Keep for orders as learned predecessor has passed order on 14-2-03. The defendant nos. 2 and 3 are aggrieved by the orders. As submitted by learned Counsel for defendant nos. 2 and 3 they want to prefer appeal against that order. Hence for further proceedings, application is kept pending till next date."

Thus, it appears that the application Exh.32 is undisposed of. Even the say at Exh.31 is pending without any adjudication. In fact, in view of the grievance of the petitioners and having found that those orders were passed behind and back of the petitioners, the Court should have passed appropriate orders after hearing them. However, as the matter is pending before the Court, it will be inappropriate to pass any order at this stage in this writ petition. This Court finds that the petition is premature and, therefore, refrains to entertain the same. Petition is, therefore, rejected.

(S.B.MHASE J.)